Mechem, 147 Ala. 405; *Barrows* v. *Bohan,* 41 Conn. 278; *Smithsonian Inst.* v. *Meech,* 169 U. S. 398. Other courts have discarded this view as unsound, at least to the extent of holding that an oral promise to the one paying the consideration takes the case out of the category of resulting trusts, and that, in the absence of fraud, no trust will be imposed. *Mullong* v. *Schneider,* 155 Ia. 12; *Chapman* v. *Chapman,* 114 Mich. 144; *Johnson* v. *Johnson,* 16 Minn. 512. This result, while logically correct so far as the principle underlying resulting trusts is concerned, seems to overlook the prevention of the unjust enrichment principle upon which a decree of constructive trust might properly be based. It is to be noted that, if the view contended for by Dean Ames and Professor Costigan is adopted to its full extent, the courts must recognize not only that the trust is not resulting but that the mere repudiation of the promise is sufficient fraud upon which to found a constructive trust. Otherwise, in many cases where relief is now granted on a resulting trust theory there could be no relief if the trust were regarded as constructive. This would be the result in states where actual fraud is required to raise a constructive trust. *Skahen* v. *Irving,* 206 Ill. 597; *Lancaster* v. *Springer,* 239 Ill. 472. It is not infrequently held that the mere repudiation of an oral agreement, made in good faith, is not fraud. *Teeney* v. *Howard,* 79 Cal. 575; *McClain* v. *McClain,* 57 Ia. 167; *Tagte* v. *Tagte,* 34 Minn. 272. Unless the courts are prepared to hold that fraudulent retention justifies a constructive trust, they are forced to deny relief except on a resulting trust theory. The additional step would seem to be warranted, however, not only because of the more effective justice which could be rendered but because it would place the cases upon an undeniably sound and logically correct basis. The simple admission in the instant case that the trust enforced there should logically be a constructive rather than a resulting trust is a step in the right direction.

VENDOR AND PURCHASER—RIGHTS OF PARTIES WHERE PREMISES ARE DAMAGED.—Plaintiff had contracted with defendant to sell him property with stores on it, conveyance to be made on a certain date. Defendant had paid a small part of the purchase price. Before the time for conveyance, without the fault of the vendor, the wall of the building containing four stores fell, damaging the property substantially. Cross suits in equity were instituted, for specific performance and for repayment of the part payment, respectively. *Held,* that the loss must fall on the vendor. *Libman* v. *Levenson, Levenson* v. *Libman* (Mass., 1920), 128 N. E. 13.

The prevailing rule in the United States is that the risk is on the vendee, since he is considered in equity as the real owner of the property. *Brewer* v. *Herbert,* 30 Md. 301; *Sewell* v. *Underhill,* 197 N. Y. 168, 8 MICH. L. REV. 515; *Neponsit Realty Co.* v. *Judge,* 176 N. Y. Supp. 133; see *Mandru* v. *Humphreys,* 98 S. E. 259. Unless the contract is unenforceable by the vendor at time of loss, as where he has not obtained title. *Amundson* v. *Severson,* 170 N. W. 633. A supporting argument is that since any increase of value belongs to the vendee, *Frick's Appeal,* 101 Pa. St. 485, the risk of loss should

also fall there. See *Brewer* v. *Herbert* and *Neponsit Realty Co.* v. *Judge, supra.* Professor Williston answers this by saying that in the case of loss the thing itself is changed in nature, admitting that increase belongs to the vendee. WILLISTON ON CONTRACTS, § 951. But suppose the premises were residential property on which oil was subsequently discovered. Would not the nature of the subject matter be changed also? The Massachusetts court in the principal case makes the rule for equity the same as the rule for law. *Wells* v. *Calnan,* 107 Mass. 514; following *dicta* in *Thompson* v. *Gould,* 20 *Pick.* 134, where the contract was unenforceable because of the Statute of Frauds. It would be convenient to have the same rule both in law and equity. But if the rule at law be so crystallized that it cannot be changed, there is no reason for making the equity rule, which, it is submitted, is a juster rule, conform to it. The court in the principal case says nothing about possession. Professor Williston recommends that the rule should be that the risk should pass upon transfer of possession, on the theory that the intention of the parties is that the property is to pass at a future time, not necessarily the time for conveyance, and that if the vendee is given immediate right to possession title is retained as security for payment,—a short way of accomplishing the same result as a mortgage back on conveyance. WILLISTON ON CONTRACTS, § 940. There is support for the possession theory; see *Good* v. *Jarrard,* 93 S. C. 229; *Sewell* v. *Underhill, supra* (where the court says that there is the added fact that purchaser was in possession). But it is submitted that if possession of the vendee is a short way of accomplishing a "mortgage," so is a land contract a short way of getting rid of the risk of loss on the part of the vendor, and of assuming the chance of increase in value on the part of the vendee. Incidentally, possession of the vendor subsequent to the contract may be regarded as a high form of security, which the parties surely can accomplish by their contract. The fact that the vendor usually will have property of his own on the premises, when he is in possession, is surely enough to guarantee that he will bestow reasonable care. See discussion by Dean Pound, and cases cited, in 33 HARV. L. REV. 813, 326-827.

WORKMEN'S COMPENSATION—ACCIDENT ARISING OUT OF EMPLOYMENT—SPORTIVE ACT OF CO-EMPLOYEE.—Applicant's intestate, while devoting his time to his work, was killed by the sportive act of a co-employee in shooting air at a high pressure into his body *per rectum* by means of a compressed air hose used in the employment. *Held,* not an accident "arising out of the employment," within the Workmen's Compensation Act. *Payne* v. *Industrial Comm.* (Ill., 1920), 129 N. E. 122.

On the general subject of liability under Workmen's Compensation Laws for sportive acts of fellow servants, see note to *Leonbruno* v. *Champlain Silk Mills,* 128 N. E. 711, in 19 MICH. L. REV. 456. The opinion in the principal case places considerable emphasis upon the lack of actual knowledge by the employer of use of the air hose for horseplay. But *quaere,* whether such actions were not "reasonably to be expected," under the doctrine of the case aove cited, especially since the employees involved were only 15 to